



# Leicester Police Department

90 South Main Street

Leicester, MA 01524



May 13, 2013

MuckRock News  
Attn: Mr. George LeVines  
DEPT MR 2174  
PO Box 55819  
Boston, MA 02205-5819

## **RE: Public Records Request – Clarification Response**

Dear Mr. LeVines,

I have received and reviewed your e-mail sent in response to my May 3, 2013 letter requesting clarification of the records you are seeking as set forth in your April 30, 2013 request. Your response indicated that I should review the Massachusetts Municipal Records Retention Manual, specifically line item 16.023. As the custodian of records, I am very familiar with this section which sets the retention schedule for "Equipment Inventory." Your response indicating that I should review this, however, does not provide any clarification as to the records you are seeking. It only points out a retention schedule for a portion of the records you requested.

Based on your failure to provide a reasonable description of the records requested beyond noting the retention schedule for a portion of the requested records, I will follow the Massachusetts Secretary of State, Public Records Division's guidance on how to handle your request. That advice is as follows:

***"Records custodians must use their superior knowledge to determine the precise record or records responsive to a request. However, a requester must provide a reasonable description of the requested records."***

I will be contacting you in the near future to provide you a good faith estimate for all of the Leicester Police Department's lists, databases, and inventory rosters that apply to the items set forth in your request. Those lists, database, and inventory rosters will be for the following items:

***"firearms, protective gear, surveillance equipment, tactical and defense equipment, vehicles, etc"***

For the purpose of your request, I am interpreting "etc" to mean "and so on."

In your e-mail you also asked several questions pertaining to “inventory lists” (which I am interpreting to be the inventory rosters you requested in your original e-mail) to the LPD. As I have previously stated, Leicester Police Department follows the guidelines of the Massachusetts Secretary of State, Public Records Division pertaining to questions from the public. Their advice is as follows: “A records custodian is not required by the Public Records Law to answer questions.....[partial].” The Leicester Police Department follows this guidance and does not answer questions as often the answers the LPD provides are misunderstood, misquoted, misconstrued, twisted, or even incorrectly interpreted as the department’s policy.

Additionally, nothing in this response should be interpreted as a change or waiver from any of the information contained in my previous correspondence, including, but not limited to, the following:

### **Records Fee**<sup>1</sup>

Unless specifically addressed by statute, a custodian may charge twenty cents (\$0.20) per page for photocopies, twenty-five cents (\$0.25) per page for microfilm copies and fifty cents (\$0.50) per page for computer printouts. Examples of statutes establishing special fees for specific public records include: G. L. c. 66, § 10(a) (copies of police records) and G. L. c. 262, § 38 (copies of records at the Registry of Deeds).

As part of your request you have requested the following: “I also request that, if appropriate, fees be waived as we believe this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records.” The Leicester Police Department does not waive the fees associated with public records requests as to do so for some requests and not for others would be an arbitrary and capricious application of a policy and thus patently unfair.

Additionally, I have noted on your website that MuckRock.com states in part that “MuckRock is an open government tool powered by state and federal Freedom of Information Laws, a generous grant from the Sunlight Foundation and you:” and that it also has fee based subscriptions for the public.

In light of the difficult economic times facing many municipalities such as the Town of Leicester, it would be fiscally irresponsible to provide the documents you have requested free of charge, so I am therefore denying your request for a waiver of the fees associated with your request.

### **Good Faith Estimate**

It is further estimated that the cost to compile the data, which you have requested, will exceed \$10.00. As required under the Massachusetts Public Records Law, I will provide you with a good faith estimate of the cost associated with your request.

### **Format of Records Released**

Your request also states the following: “I expect the request to be filled in an accessible format, including for screen readers, which provide text-to-speech for persons unable to read print. Files

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<sup>1</sup>See e.g., G.L. c. 66, section 10(a) (fees for police records); see also 950 CMR 32.06

5. **Exemption (n)** - Exemption (n) applies to: records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the Commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

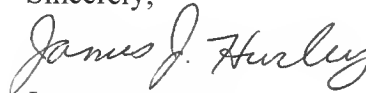
### **Right of Appeal**

While the Leicester Police Department has not denied your request for public records, should you disagree with the information contained herein, you may exercise your statutory right of appeal as follows:

*"A requester who is denied access to any requested information may petition the Supervisor of Records (Supervisor) for a review of the request. The Supervisor will then instruct a staff member, usually a staff attorney or a legal intern, to contact the records custodian and requester to ascertain the relevant facts and discuss the applicable law. The findings of the attorney or intern are then reported to the Supervisor to assist in making a decision. The records custodian will receive an administrative order if the Supervisor determines that records are being improperly withheld or the proposed fee is excessive. If the records custodian does not comply with an order issued by the Supervisor, the case may be referred to the Office of the Attorney General or appropriate district attorney for enforcement."*<sup>3</sup>

The Leicester Police Department will provide your good faith estimate within the lawfully required time frame.

Sincerely,



James J. Hurley  
Chief of Police

cc: public records file

Sent via certified mail # 7010 3090 0000 6073 4877

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<sup>3</sup> 950 CMR 32.05(3)